

# EXHIBIT 3

1  
2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON AT SEATTLE  
4

5 MICROSOFT CORPORATION, )  
6 Plaintiff, ) 10-01823-JLR  
7 v. ) SEATTLE, WASHINGTON  
8 MOTOROLA INC., et al, ) November 19, 2012  
9 Defendant. ) TRIAL DAY 1  
10 )

11 VERBATIM REPORT OF PROCEEDINGS  
12 BEFORE THE HONORABLE JAMES L. ROBERT  
13 UNITED STATES DISTRICT JUDGE  
14

15 APPEARANCES:  
16

17 For the Plaintiff: Arthur Harrigan, Christopher  
18 Wion, David Pritikin and Andy  
Culbert

19  
20  
21 For the Defendants: Jesse Jenner, Ralph Palumbo, Mark  
22 Rowland, Philip McCune and Neill  
Taylor  
23  
24  
25

1 Q I would like to turn to the facts of this case. Assuming  
2 that there are at least 1,000 essential patents relevant to  
3 each of the 802.11 and the H.264 standards, and at least 50  
4 different patentholders, what is your opinion about whether  
5 the ex ante approach is feasible in this case?

6 A That strict ex ante approach would be completely  
7 infeasible in this case.

8 Q Now, turning to the opinions you expressed regarding the  
9 views testified to by Microsoft's economist, Professor  
10 Murphy, Professor Simcoe and Dr. Lynde, first, is the concept  
11 of hold-up addressed in the economic literature?

12 A It is indeed.

13 Q What is the relationship between the RAND commitment and  
14 the potential for hold-up?

15 A Well, in short form, the RAND commitment and the whole  
16 apparatus exists to deal with hold-up.

17 Q How are RAND licenses typically established in practice?

18 A My understanding is they are typically -- not universally,  
19 obviously, but typically established through bilateral  
20 negotiation ex post, that is to say after a standard has been  
21 established.

22 Q Assuming that SEP holders and standard implementers are  
23 sophisticated parties, what is your opinion regarding  
24 Microsoft's argument that all licenses negotiated ex post are  
25 likely not to be RAND because the royalty includes hold-up